Lokanath a/l Ramanath v Tribunal Pengurusan Strata & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24–22–05 OF 2019
NORDIN HASSAN J
11 NOVEMBER 2019

Civil Procedure — Judicial review — Application for — Plaintiff applied for judicial review against decision of Strata Management Tribunal — Whether second defendant had jurisdiction to issue work stop order — Whether Tribunal had jurisdiction to hear second defendant's claim — Whether no opportunity given to parties to present case before Tribunal — Whether plaintiff denied right of legal representation — Whether there was infringement of law as no written reasons of award given by Tribunal — Whether delay in making award was justified — Rules of Court 2012 O 53 r 3 — Strata Management Act 2013 — Strata Maintenance and Management Corporation Regulations 2015

The plaintiff filed an application to set aside the first defendant's decision ('the tribunal') dated 14 February 2019 which was in favour of the second defendant pursuant to s 121(2)(b) of the Strata Management Act 2013 ('the Act'). The plaintiff was the proprietor of Unit 8D 2-7, Prima Damansara Condominium ('PDC') at No 8, Jalan Chempenai, Damansara Heights, Kuala Lumpur. The plaintiff had applied to the PDC Management Office to carry out renovation works at his unit and had submitted the work authorisation and renovation procedure acknowledgment attaching the layout floor plan with the areas of work, as well as the timeline of the renovation works. The plaintiff highlighted to the second defendant that the renovation works would invoke the unit's bedroom and bathroom only. Upon receiving the renovation application, the second defendant's rules and regulations for renovation works was explained to the plaintiff which included the rules that the owners were not allowed to do renovation that altered to change the exterior of the property. The plaintiff acknowledged it by signing the condominium renovation procedure acknowledgement and confirmed that no alteration would be done to the building facade. Thereafter, on 2 February 2017, the plaintiff's application for renovation was approved by the PDC building manager and the PDC management council. However, the second defendant discovered that the plaintiff had carried out renovation works which was not approved involving the plaintiff's balcony which affected the external facade of the condominium. The second defendant issued a stop work order on 20 March 2017 to the plaintiff requiring the alteration to the external facade to be dismantled within seven working days. As the plaintiff had failed to comply with the stop work order, the defendants issued a letter to the plaintiff informing that the plaintiff had breached the condominium's renovation guidelines and house rules as well

as Strata Maintenance and Management Corporation Regulation 2015 ('SMR 2015'). On 3 April 2017, the second defendant file its claim against the plaintiff at the strata management tribunal. In the counterclaim, the plaintiff claimed to be given equal treatment a of other units' owner and to stop any discrimination with regards to his unit. The tribunal handed down its decision whereby the second defendant's claim was allowed. Hence, the plaintiff applied for the present judicial review. The applicant contended the issue of jurisdiction of the first defendant, the issue of equal treatment of parties and the issue of applicant been denied on the right to legal representation by the counsel. The applicant also contended on the irregularities of the award given by the tribunal as no written reasons of the award given by the tribunal and the delay of the award given from the date of hearing.

Held, dismissing the application with costs of RM5,000 to be paid to second defendant:

(1) The issuance of the stop work order dated 20 March 2017 by the second defendant to the defendant was in accordance with its duties and powers conferred under the SMA 2013 and the SMR 2015. The second respondent had the statutory duty to ensure that the proprietor of the condominium should comply with the law and in the circumstances, the stop work order requiring the alteration to the external faced to be dismantled within seven working days was in accordance with the law and was valid (see paras 18–19).

(2) The first defendant was exercising its duty to enforce the by-laws of the Prima Damansara Condominium and its jurisdiction was clearly provided and applicable under s 70(7) of the SMA 2013. As such, the first defendant was clothed with the jurisdiction to hear the second defendant's claim (see paras 21, 23 & 25).

(3) In the present case, both parties were given the opportunity to present their case before the tribunal. They also had file their written submissions for the consideration of the first defendant. There was nothing to indicate that the plaintiff was not afforded the opportunity to present his case (see para 27).

(4) It was undisputed fact that both parties were not represented by counsel in the hearing before the first respondent. The representation by counsel was the discretion of the tribunal if the tribunal was of the opinion that the matter in dispute involved complex issues of law and one party would suffer severe financial hardship if he was not represented by counsel. Without legal representation, it could not be said that the tribunal had failed to give equal treatment to the plaintiff or had breached the rules of natural justice. As such, the plaintiff's contention was devoid of any merits (see paras 29–30).

(5) On the issue of no written reasons of award given by the tribunal, s 117(2) of the SMA 2013 did not require the tribunal to furnish its written reasons as the oral decision was sufficient to comply with the provision. There was no infringement of s 117(2) of the SMA 2013 (see para 32).

(6) On the issue of the delay of award given by the tribunal, it was not disputed that the president of the tribunal suffered health problems and had undergone medical treatment. The delay was reasonable and it was not practicable to make the award within 60 days. The delay in making the award was justified (see para 38).

[Bahasa Malaysia summary

Plaintif telah memfailkan permohonan untuk mengetepikan keputusan defendan pertama ('Tribunal tersebut') yang bertarikh 14 Februari 2019 yang memihak kepada defendan kedua menurut s 121(2)(b) Akta Pengurusan Strata 2013 ('Akta'). Plaintif adalah pemilik Unit 8D 2-7, Prima Damansara Condominium ('PDC') di No 8, Chempenai Road, Damansara Heights, Kuala Lumpur. Plaintif telah membuat permohonan kepada Pejabat Pengurusan PDC untuk melakukan kerja-kerja pengubahsuaian di unitnya dan telah menyerahkan pengesahan prosedur kerja dan prosedur pengubahsuaian dengan melampirkan susun atur pelan tingkat bersama dengan kawasan pembinaan, serta garis waktu kerja-kerja pengubahsuaian. Plaintif menegaskan kepada defendan kedua bahawa kerja-kerja pengubahsuaian hanya akan menggunakan unit bilik tidur dan bilik mandi. Setelah menerima permohonan pengubahsuaian tersebut, peraturan dan garis panduan defendan kedua untuk kerja-kerja pengubahsuaian telah dijelaskan kepada plaintif yang mana berserta dengan peraturan bahawa pemilik tidak dibenarkan melakukan pengubahsuaian yang akan mengubah bahagian luar hartanah. Plaintif mengakui dengan menandatangani pengakuan prosedur pengubahsuaian kondominium dan mengesahkan bahawa tidak akan ada perubahan pada bahagian muka bangunan. Selepas itu, pada 2 Februari 2017, permohonan pengubahsuaian plaintif telah diluluskan oleh pengurus bangunan PDC dan majlis pengurusan PDC. Namun, defendan kedua mendapati bahawa plaintif telah melakukan kerja-kerja pengubahsuaian yang tidak diluluskan yang melibatkan balkoni plaintif yang mempengaruhi bahagian luar kondominium. Defendan kedua mengeluarkan perintah berhenti kerja pada 20 Mac 2017 kepada plaintif yang menuntut agar perubahan pada muka depan dirobohkan dalam masa tujuh hari bekerja. Oleh kerana plaintif tidak mematuhi perintah berhenti kerja, defendan telah mengeluarkan surat kepada plaintif yang memaklumkan bahawa plaintif telah melanggar garis panduan pengubahsuaian kondominium dan peraturan rumah serta Peraturan Perbadanan Penyelenggaraan dan Pengurusan Strata 2015 ('Peraturan'). Pada 3 April 2017, defendan kedua memfailkan tuntutannya terhadap plaintif di tribunal pengurusan strata. Dalam tuntutan

balas, plaintif menyatakan untuk diberi layanan yang sama rata dengan pemilik unit lain dan menghentikan sebarang diskriminasi terhadap unitnya. Tribunal memberikan keputusannya dimana tuntutan defendan kedua dibenarkan. Oleh itu, plaintif memohon semakan kehakiman yang ada sekarang. Pemohon mempertikaikan isu bidang kuasa defendan pertama, isu perlakuan adil pihak dan isu pemohon ditolak mengenai hak untuk diwakili oleh peguam. Pemohon juga mendakwa mengenai ketidakwajaran award yang diberikan oleh tribunal kerana tidak ada alasan bertulis mengenai award yang diberikan oleh tribunal dan kelewatan yang diberikan dari tarikh perbicaraan.

Diputuskan, menolak permohonan plaintif dengan kos RM5,000 untuk dibayar kepada defendan kedua:

(1) Penyerahan perintah berhenti kerja bertarikh 20 Mac 2017 oleh defendan kedua kepada plaintif adalah bersesuaian dengan tugas dan kuasa yang diberikan di bawah Akta 2013 dan Peraturan. Responden kedua mempunyai kewajiban undang-undang untuk memastikan bahawa pemilik kondominium harus mematuhi undang-undang dan dalam keadaan itu, perintah berhenti kerja yang memerlukan perubahan kepada luaran untuk dirobohkan dalam masa tujuh hari bekerja adalah sesuai dengan undang-undang dan sah (lihat perenggan 18–19).

(2) Defendan pertama menjalankan tugasnya untuk menguatkuasakan undang-undang kecil Prima Damansara Condominium dan bidang kuasanya secara jelas diperuntukkan dan terpakai di bawah s 70(7) Akta. Dengan demikian, defendan pertama terpakai dengan bidang kuasa untuk mendengar tuntutan defendan kedua (lihat perenggan 21, 23 & 25).

(3) Dalam kes semasa, kedua-dua pihak diberi kesempatan untuk mengemukakan kes mereka di hadapan tribunal. Mereka juga telah memfailkan hujahan bertulis untuk pertimbangan defendan pertama. Tidak ada yang menunjukkan bahawa plaintif tidak diberi peluang untuk mengemukakan kesnya (lihat perenggan 27).

(4) Ianya adalah fakta tidak dapat disangkal bahawa kedua-dua pihak tidak diwakili oleh peguam dalam pendengaran dihadapan responden pertama. Perwakilan oleh peguam adalah budi bicara tribunal jika tribunal berpendapat bahawa perkara yang dipertikaikan tersebut melibatkan perkara perundangan yang kompleks dan satu pihak akan mengalami kesulitan kewangan yang teruk jika dia tidak diwakili oleh peguam. Tanpa diwakili oleh peguam, tidak dapat dikatakan bahawa tribunal telah terkhilaf dalam memberikan perlakuan yang adil kepada plaintif atau telah melanggar peraturan keadilan semula jadi. Oleh yang demikian, dakwaan plaintif tidak mempunyai sebarang merit (lihat perenggan 29–30).

(5) Mengenai isu tidak ada alasan bertulis mengenai award yang diberikan oleh tribunal, s 117(2) Akta tidak mewajibkan tribunal untuk memberikan alasan bertulisnya kerana keputusan lisan sudah cukup untuk mematuhi peruntukan tersebut. Tidak ada pelanggaran terhadap s 117(2) Akta (lihat perenggan 32).

(6) Mengenai isu kelewatan award yang diberikan oleh tribunal, tidak dipertikaikan bahawa presiden tribunal mengalami masalah kesihatan dan telah menjalani rawatan perubatan. Kelewatan itu wajar dan tidak praktikal untuk membuat award dalam masa 60 hari. Kelewatan memberikan award adalah wajar (lihat perenggan 38).]

Cases referred to

Bonifac Lobo a/l Robert V Lobo & Anor v Tribunal Pengurusan Strata, Putrajaya & Ors [2017] MLJU 315; [2017] 6 CLJ 537, HC (refd)

Hazlina Hamzah v Kumon Method of Learning Centre [2006] 1 MLRA 624, CA (refd)

Tham Sau Hoong lwn Tribunal Pengurusan Strata dan satu lagi [2019] 11 MLJ 760, HC (refd)

Legislation referred to

Strata Maintenance and Management Corporation) Regulation 2015 Third Schedule, para 3(9)

Strata Management Act 2013 ss 59(1)(h), (2)(j), 70(7), (7)(a), 105(1), 110(2), 113, 117(1), (2), 121(1), (2), (2)(b), Fourth Schedule, Part 1

Surendra Ananth (Thomas Philip) for the plaintiff.

Roshan a/l Karthi Kayan (Mohammad Sallehuddin Mohd Ali with him) (Federal Counsel, Tribunal Perumahan dan Pengurusan Strata, Kementerian Perumahan dan Kerajaan Tempatan) for the first defendant.

Tunku Farik (Sarah Low with him) (Azim Tunku Farid & Wong) for the second defendant.

Nordin Hassan J:

INTRODUCTION

[1] The plaintiff in this case filed an application to set aside the first defendant's decision ('the tribunal') dated 14 February 2019 which is in favour of the second defendant pursuant to s 121(2)(b) of the Strata Management Act 2013 ('the SMA 2013').

[2] The plaintiff seeks, inter alia, the following reliefs:

(a) an order that the award rendered by the first defendant on 14 February 2019 in the Claim No TPS/W-0732–04/17 be set aside in whole

pursuant to s 121(2)(b) of the Strata Management Act 2013; and

(b) a declaration that the 'Stop Work Order — Non Compliance of House Rules and Regulation' dated 20 March 2017 issued by Prima Damansara Management Corp is null and void.

THE SALIENT FACTS

[3] The material facts in this application are as follows:

(a) the plaintiff is the proprietor of Unit 8D 2-7, Prima Damansara Condominium ('PDC') at No 8 Jalan Chempenai, Damansara Heights, Kuala Lumpur;

(b) on 21 January 2017, the plaintiff had applied to the PDC Management Office to carry out renovation works at his unit and had submitted the 'Work Authorization and Renovation Procedure Acknowledgement' attaching the layout floor plan with the areas of work, as well as the timeline of the renovation works. In this application, the plaintiff highlighted to the second defendant that the renovation works would involve the unit's bedroom and bathroom only;

(c) upon receiving the renovation application, the second defendant's 'Rules and Regulations For Renovation Works' was explained to the plaintif which includes the rules that owners are not allowed to do renovation that alter or change the exterior of the property;

(d) the plaintiff acknowledged this by signing the Condominium Renovation Procedure Acknowledgement and confirmed that no alteration will be done to the building facade as follows:

> I hereby confirmed that I received and read a copy of the Renovation Rules and Regulations for Prima Damansara.
>
> No alteration to the building facade or common area will be carried out during the course of my renovation works. All external/internal load bearing walls will remain unchanged ...
>
> ... I shall indemnify and keep the management indemnified against any claims whatsoever arising out of non-compliance with the Renovation and Regulation of Prima Damansara by myself or any contractor ...

(e) thereafter, on 2 February 2017, the plaintiff's application for renovation work was approved by the PDC Building Manager and the PDC Management Council;

(f) the renovation works commenced on 6 February 2017 and were substantially completed on 17 March 2017;

(g) however, the second defendant discovered that the plaintif had carried out renovation works involving the plaintiff's balcony which affects the

external facade of the condominium. This part of renovation works has not been approved by the second defendant;

(h) consequently, the second defendant issued a stop work order dated 20 March 2017 to the plaintiff requiring the alteration to the external facade to be dismantled within seven working days;

(i) as the plaintiff had failed to comply with the stop work order, on 3 April 2017, the defendants issued a letter to the plaintiff informing that the plaintiff had breached the Condominium's Renovation Guidelines and House Rules as well as the Strata Maintenance and Management Corporation) Regulation 2015 ('the SMR 2015').

(j) on 3 April 2017, the second defendant filed its claim in Form 1 against the plaintiff at the Strata Management Tribunal and the claim is that the plaintiff had renovated the facade of his unit without the second defendant's approval. The claim in its original words in Form 1 are as follows:

> Tuan punya telah mengubahsuai Fasad unit mereka tanpa kebenaran pihak Perbadanan Pengurusan Prima Damansara.

(k) on 17 April 2017, the plaintiff then filed his statement of defence and counterclaim in Form 2 at the Strata Management Tribunal. In essence the plaintiff refuted the plaintiff's claim and in the counterclaim the plaintiff claimed to be given equal treatment as of other units' owner and to stop any discrimination with regards to his unit. The plaintiff also claimed that the stop work order issued by the second respondent should be rescinded immediately; and

(l) on 14 December 2019, the tribunal handed down its decision whereby the second defendant's claim was allowed and the plaintiff's counterclaim was dismissed; and

(m) hence, the present judicial review application.

THE PLAINTIFF'S GROUNDS TO SET ASIDE THE TRIBUNAL'S AWARD

[4] The plaintiff's grounds to set aside the award of the tribunal are the following:

(a) the second defendant's claim is not within the jurisdiction of the tribunal. The plaintiff submitted that the claim does not fall within Part 1 of the Fourth Schedule of the SMA 2013 in which the tribunal has the jurisdiction as provided for under s 105(1) of the same Act. It was further submitted that s 70(7)(a) of the said Act is inapplicable in the present case;

(b) there were manifest delay in the issuance of the award by the tribunal and as such in violation of s 117(1) of SMA 2013;

(c) there were violations of s 113 of SMA 2013 by the first defendant on the following reasons:

(i) the plaintiff was not given a reasonable opportunity to present his case; and

(ii) the plaintiff was not allowed legal representation.

(d) further, the tribunal's award is uncertain and ambigous; and

(e) next, the tribunal had failed to consider the relevant issues put to the first defendant which are the following:

(i) failed to deal with the issue of whether there was an external facade in the Prima Damansara Condominium; and

(ii) failed to consider the photographic evidence showing that there is no longer an external facade in the Prima Damansara Condominium.

THE TRIBUNAL'S SUBMISSION

[5] Conversely, the tribunal submitted that the tribunal is clothe with the jurisdiction to hear the second defendant's claim pursuant to s 70(7) of the SMA 2013.

[6] The first defendant further contended that s 113 of the same Act has been adhered to as both the plaintiff and the second defendant were given the right to present their case at the hearing of the claim on 17 May 2017. They were also given the opportunity to file their submissions.

[7] The tribunal also submitted that there is no contravention of s 117(1) of the SMA 2013 as the delay in delivering the award is with justification.

[8] Further, the tribunal further contended that there is also no violation of s 117(2) of the said Act as oral reasons had been given for the said award.

[9] Next, the tribunal submitted that based on the notes of evidence, the second defendant had claimed for the facade to be reinstated to its original condition, as such the issue of the award being uncertain and ambiguous is untenable.

[10] The tribunal also submitted that it had considered all relevant issues put to it in the preset case as can be seen in the written decision of the tribunal.

A THE FINDINGS OF THIS COURT

[11] The core issue in the present case relates to the renovation works by the plaintiff on his unit in Prima Damansara Condominium which involves the renovation at the balcony facing the main road.

B

[12] Here, it is undisputed that the plaintiff has applied for the approval from the second defendant to carry out renovation works at his unit, but the renovation approval sought by the plaintiff was based on his application and plan submitted to the second defendant only in respect of the unit's bedroom and bathrooms.

C

[13] Further, the plaintiff in the 'Condominium Renovation Procedure Acknowledgement' confirmed that no alteration will be carried out to the building facade. The confirmation is as follows:

D

> I hereby confirmed that I received and read a copy of the Renovation Rules and Regulations for Prima Damansara.
>
> No alteration to the building facade or common area will be carried out during the course of my renovation works. All external/internal load bearing walls will remain unchanged. Air conditioning compressor will be installed at their dedicated locations provided by the developer in its original plans.
>
> I acknowledge that the management has the right to carry out inspections during renovation works inside the unit concerned.
>
> I shall indemnify and keep the management indemnified against any claims whatsoever arising out of non-compliance with the Renovation and Regulation of Prima Damansara by myself or any contractor.

E

F

[14] The plaintiff's application then was approved by the second defendant.

G

[15] However, the plaintiff had also carried out renovation works at the side and front of the unit's balcony which is facing the access road. In this regard, based on the evidence by witnesses and the photographs produced before the Industrial Court, it clearly showed that the renovation works had changed the external facade of the condominium.

H

[16] The plaintiff also in his submission before the Industrial Court had admitted that the renovation had altered the common facade of the condominium.

I

[17] This renovation at the unit's balcony clearly in violation of r 6.1 and 6.2 of the Prima Damansara Condominium By Laws which provides as follows:

(a) Rule 6.1:

6.0 RENOVATION WORKS

6. 1 *Permission before the Commencement of Work.*

(i) Proprietors must apply for renovation works at the Management Office fourteen (14) days in advance. Renovation works need to be specified and supporting documentation and plans need to be submitted:

(b) Floor Layout Plan

(c) Proposed Electrical Layout Plan

(d) Proposed Plumbing Layout Plan

(e) Air Conditioning/Compressor Layout Plan

Alterations to the building facade or external/internal load bearing walls are strictly prohibited. All renovation works must comply with rules and regulations imposed by the Prima Damansara Management Corporation and relevant authorities and proprietors may be required to obtain approval from those authorities.

(ii) Prior to commencement of work a renovation deposit must be made and all outstanding service charge or rentals must be paid in full.

Proprietors are required to acknowledge that they have been briefed by the management on the rules and regulations and that they adhere to those regulations.'

(a) Rule 6.2:

6.2 Rules and Regulations for Renovation Works

(a) Preliminary/Facade Control

All renovation works shall not affect the common property or its facade. The external facade cannot be altered which includes but not limited to Doors, windows, balconies, etc. Must be as per original developer plans. External design and paint works must also follow original developer plans.

All air-conditioning compressors and allied works, wmngs, ptpmg etc, must be located only in areas designated by the developer in its original plans.

All renovation works shall not affect the common property or its facade.

[18] In this regard, the issuance of the stop work order dated 20 March 2017 by the second defendant to the plaintiff is in accordance with its duties and powers conferred under the SMA 2013 and the Strata Management (Maintenance and Management) Regulations 2015 which states as follows:

(i) s 59(1)(h) of the SMA 2013:

Duties and powers of management corporation

(1) The *duties of a management corporation* shall be as follows:

(h) *to enforce the by-laws* ...

(ii) s 59(2)(j) of the SMA 2013:

(2) The powers of the management corporation shall be as follows:

(j) *to do all things reasonably necessary for the performance of its duties under this Act and for the enforcement of the by-laws*.

(iii) para 3(9) of the Third Schedule of the Strata Maintenance and Management Corporation) Regulation 2015:

3. F*unctions of the management corporation*

The *management corporation* shall —

... (9) *administer and enforce the by-laws* and any additional by-laws made under the Act ...

[19] Clearly, the second respondent has the statutory duty to ensure that the proprietor of the condominium should comply with the law and in the circumstances, the stop work order dated 20 March 2017 requiring the alteration to the external facade to be dismantled within seven working days is in accordance with the law and is valid.

[20] Moving on to the grounds of this judicial review application, firstly, the applicant raised the issue of jurisdiction of the first defendant.

[21] On this issue, the first defendant was exercising its duty to enforce the by-laws of the Prima Damansara Condominium and its jurisdiction is clearly provided under s 70(7) of the SMA 2013 which reads as follows:

(7) The management corporation or any proprietor shall be entitled to apply to the tribunal or a court of competent jurisdiction —

(a) *for an order to enforce the performance of*, or restrain the breach of, *any by-laws by*; or

(b) to recover damages for any loss or injury to any persons or properties arising out of the breach of any by-law from,

any persons bound to comply with the by-laws.

[22] The core issue in the present case, inter alia, is the enforcement of the said by-laws which resulted the issuance of the stop work order dated 20 March 2017 to the plaintiff. In addition, one of the reliefs sought by the plaintiff in this application is for a declaration that the stop work order is null and void.

[23] In the circumstances, s 70(7) above mentioned is applicable and it

provides the jurisdiction for the tribunal irrespective of Part 1 of the Fourth Schedule of the SMA 2013.

[24] The tribunal's power to decide on the issue of compliance with by-law has also been discussed in *Tham Sau Hoong lwn Tribunal Pengurusan Strata dan satu lagi* [2019] 11 MLJ 760, whereby the judge held as follows:

> (f) selaras dengan kuasa yang diberikan kepadanya oleh s 59(1)(e) dan 59(2)(f) Akta 2013, responden kedua juga diberi kuasa dan hak di bawah s 70(7)(a) Akta 2013 untuk memohon kepada tribunal untuk memaksa mana-mana pihak supaya patuh kepada mana-mana peraturan atau mencegah ketidakpatuhan kepada mana-mana peraturan.
>
> Seksyen 70(7)(a) menyatakan:
>
> > (7) The management corporation or any proprietor shall be entitled to apply to the tribunal or a court of competent jurisdiction —
> >
> > (a) For an order to enforce the performance of, or restrain the breach of, any by-laws;

[25] As such, it is my considered view that the first defendant is clothe with the jurisdiction to hear the second defendant's claim in the present case.

[26] The next issue is the compliance of s 113 of the SMA 2013, which provides as follows:

> 113 Equal treatment of parties
>
> The tribunal shall act fairly and impartially as between the parties, giving each party a reasonable opportunity of presenting his case and dealing with that of his opponent.

[27] In the present case, both parties were given the opportunity to present their case before the tribunal. They also had filed their written submissions for the consideration of the first defendant. Here, there is nothing to indicate that the plaintiff was not afforded the opportunity to present his case.

[28] In the case of *Bonifac Lobo a/l Robert V Lobo & Anor v Tribunal Pengurusan Strata, Putrajaya & Ors* [2017] MLJU 315; [2017] 6 CLJ 537, it was held that as applicant was given the opportunity to present his case, there was no breach of the rules of natural justice. At p 52 of the case, the judge said this:

> [57] More crucially, even if Mr Lobo's version of events is to be believed, it does not change the fact that he had been given the opportunity not only to present his case orally on 11 January 2016, but he had also been given the opportunity to respond

to the respondents' contentions through his written submissions of 13 January 2016. For this reason alone, the applicants' contention that there had been a breach of the rules of natural justice must fail.

[29] Next, on the issue of legal representation, it is undisputed fact that both parties were not represented by counsel in the hearing before the first respondent. This representation by counsel is the discretion of the tribunal if the tribunal is of the opinion that the matter in dispute involves complex issues of law and one party will suffer severe financial hardship if he is not represented by counsel.

[30] In this regard, s 110(2) of the SMA 2013, provides as follows:

(2) No party shall be represented by an advocate and solicitor at a hearing unless, in the opinion of the tribunal, the matter in question involves complex issues of law and one party will suffer severe financial hardship if he is not represented by an advocate and solicitor.

[31] In the instant case, the issue is straight forward involving the renovation works without approval and without legal representation by counsel, it cannot be said that the tribunal had failed to give equal treatment to the plaintiff or had breached the rules of natural justice. As such the plaintiff's contention on this issue is devoid of any merits.

[32] Further, with regards to the reasons for the award by the tribunal, s 117(2) of the SMA 2013, provides as follows:

(2) The tribunal shall in all proceedings give its reasons for its award in the proceedings.

[33] On this issue, s 117(2) does not require the tribunal to furnish its written reasons as oral decision is sufficient to comply with this provision. This position has been explained by the Court of Appeal in *Hazlina Hamzah v Kumon Method of Learning Centre* [2006] 1 MLRA 624, whereby s 114 of the Consumer Protection Act 1999, which is similar to s 117(2) was discussed and the court ruled as follows:

[10] In the first place, all that s 114 says is that the tribunal must give reasons for making its award. The section does not say that the reasons must be in writing. Nor does it fix any time limit for the delivery of reasons. Having regard to the general scheme of the Act is sufficient if the tribunal gives oral reasons. What is important is the speedy disposal of a dispute with oral reasons for the decision. If the need arises, the tribunal may deliver written reasons at a later point in time. If the tribunal refuses to deliver any reasons - which is certainly not the case here — then the obvious remedy open to the respondent was to move the High Court for mandamus requiring the immediate production of the reasons. As it happens, there was here a claim for mandamus. But it was never pursued. The judicial commissioner's

attention was not drawn to it. Instead, the respondent stood by while the High Court kept adjourning the proceedings to await written reasons. This was certainly unnecessary as there is no requirement for the tribunal to produce written reasons. It follows from what has been said thus far that there was no breach of s 114 of the Act. There was therefore certainly no warrant for the grant of certiorari in this case.

[34] Reverting to the present case, the President of the tribunal had given her reasons for the award in her written decision dated 31 December 2018 and had it read orally in court on 14 February 2019. As such, I find, there is no infringement of s 117(2) of the SMA 2013.

[35] The other issue raised by the plaintiff is the delay in making the award where the award was handed down 600 days from the date of the hearing.

[36] The plaintiff relied on s 117(1) of the SMA 2013, which states the following:

117(1) The tribunal shall make its award without delay and, where practicable, within sixty days from the first day the hearing before the tribunal commences.

[37] The wordings of this cl 117(1) is unambiguous that the award shall be made without delay and where practicable, within 60 days from the first day the hearing commences.

[38] The 60 days time line is applicable to a situation where it is practicable to comply with the time period.

[39] However, in the present case, it is not disputed that the President of the tribunal suffered health problems and had undergone medical treatment. Here, the delay is reasonable under the circumstances and clearly it was not practicable to make the award within 60 days. The delay in making the award in the present case, to me, is justified.

[40] I also find that the President of the tribunal had dealt with all the relevant issue put before the tribunal which can be seen in her award dated 31 December 2018 and no uncertainty or ambiguity in the said award.

[41] As alluded to earlier, the first defendant's claim in Form 1 is pertaining to the renovation works by the plaintiff which altered the external facade of the condominium. In the statement of defence, the plaintiff denied this claim and countered claim for the plaintiff to be given equal treatment and stop work order to be rescinded immediately.

[42] The tribunal then decided to allow the first defendant's claim and to dismiss the plaintiff's counterclaim.

[43] The effect of this award is undoubtedly clear that the plaintiff is to reinstate the external facade of the condominium and the stop work order is valid and enforceable.

[44] Further, having read the award of the tribunal, I find, the condominium and the evidence related hereto had been sufficiently considered by the tribunal.

[45] Having considered the evidence in totality and the award by the President of the tribunal, I find, there is no serious irregularity affecting the said award that warrants the intervention of this court pursuant to s 121(1) and (2) of the SMA 2013 which provides:

> 121(1) A party to the proceedings of the tribunal may, upon notice to the other party and to the tribunal, apply to the High Court challenging an award in the proceedings on the ground of serious irregularity affecting the works.
>
> (2) If there is shown to be serious irregularities affecting the award, the High Court may —
>
> (a) remit the award to the tribunal, in whole or in part, for reconsideration; or
>
> (b) set the award aside in whole or in part.

CONCLUSION

[46] In the circumstances, the plaintiff's application is dismissed with costs of RM5,000 to be paid to the second defendant.

Application dismissed with costs of RM5,000 paid to the second defedant.

Reported by Mohd Kamarul Anwar